

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claims 2-8 and 11-16 are pending in the present application. Claims 1, 9, and 10 have been cancelled. Claims 14-16 are new. Claims 2-8 and 11-16 have been amended. Claims 2, 3, 6-8, and 11-13 are independent claims. The Examiner is respectfully requested to reconsider his rejections in view of the Amendments and the following Remarks.

Rejection Under 35 U.S.C. § 101

Claims 12 and 13 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Particularly, the Examiner asserts that these claims recite descriptive material per se because the claimed program is not embodied on a computer-readable medium. In response, Applicants have amended claims 12 and 13 to recite "A computer-readable medium on which is embodied a communication control program." Accordingly, Applicants submit that the claims now recite a statutory article of manufacture. Therefore, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Prior Art Rejections

Claims 5, 7, and 12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,926,133 to Green, Jr. (hereafter "Green"). Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Green in view of U.S. Patent No. 4,513,413 to Gorman et al. (hereafter "Gorman"). Claim 3 stands rejected under § 103(a) as being unpatentable over Green in view of U.S. Patent Application Publication No. 2001/0026542 to Kusaka et al. (hereafter "Kusaka"). Claim 4 stands rejected under § 103(a) as being unpatentable over Green in view of U.S. Patent No. 6,298,050 to van Heeswyk et al. Claim 6 stands rejected under § 103(a) as being unpatentable over Green in view of U.S. Patent Application Publication No. 2001/0050926 to Kumar (hereafter "Kumar"). Claims 8, 11, and 14 stand rejected under § 103(a) as being unpatentable over Green in view of U.S. Patent No. 6,826,394 to Raith et al. These rejections, insofar as they pertain to the presently pending claims, are respectfully traversed.

Applicants initially point out that claims 2, 3, and 6 have been amended by being rewritten in independent form. Thus, the current set of independent claims includes claims 2, 3, 6-8, and 11-13.

Independent Claim 2:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants respectfully submit that the Examiner has failed to point out a teaching or suggestion in the prior art of each feature recited in claim 2.

Claim 2 recites, *inter alia*, “a spread modulation part configured to perform spread modulation of an information signal.” In page 5 of the Office Action, the Examiner admits that Green fails to disclose such features. However, the Examiner asserts that Gorman discloses this feature. Applicants respectfully disagree. Gorman teaches, throughout its text, the use of “frequency modulation,” which is different. There is no teaching or suggestion of a spread modulation part in Gordon, as required by the claim.

Furthermore, according to claim 2, the claimed invention “generates the special radio wave signal to be of high power spectrum density by bypassing the spread modulation part.” The Examiner asserts that Gorman teaches bypassing the spread modulation part in col. 11, lines 53-26. While this passage of Gorman mentions “bypassing the modulation and demodulation circuits,” it teaches that such circuits are bypassed “so that **direct audio frequency signals ...** are transmitted.” This is not the same as bypassing a spread modulation part in order to **generate a special radio wave of high power spectrum density** as required by claim 2.

Moreover, it is unclear how the Examiner intends to modify Green in view of Gorman’s teachings. Particularly, Green discusses transmitting E-911 requests at a high power level. However, such requests cannot be transmitted at a high power level simply by “bypassing the modulation and demodulation circuits” as taught by Gorman.

Green and Gorman, taken separately or in obvious combination, fail to teach or suggest the claimed features of “a spread modulation part configured to perform spread modulation of an information signal,” and “generat[ing] the special radio wave signal to be of high power spectrum density by bypassing the spread modulation part.” Therefore, claim 2 is in condition for allowance, and dependent claims 4 and 5 are allowable at least by virtue of their dependency on claim 2.

Independent Claim 3:

Independent claim 3 recites, *inter alia*, the following features:

“the mobile station side transmission part includes a special code generation part to generate a **special code of a direct-current component**, and a spread modulation part to perform spread modulation of an information signal by using the special code generated by the special code generation part,” and

“the mobile station side transmission part generates the special radio wave signal of high power spectrum density by **performing spread modulation** of the information signal by **using the special code of the direct-current component**”

(emphasis added).

In page 3 of the Office Action, the Examiner admits that the aforementioned features are not disclosed in Green. However, the Examiner asserts that Kusaka discloses such features, citing paragraphs 0004, 0005, and 0033. Applicants respectfully disagree with this assertion.

While paragraph 0004 of Kusaka mentions “special codes of **pseudorandom (PN) sequence**” (emphasis added), this is completely different than a **special code of a direct-current component** recited in claim 3. Further, since Kusaka does not teach or suggest generating a special code of a direct-current component, Kusaka’s invention is not capable of generating a special radio wave signal of high power spectrum density by performing spread modulation by using the special code of the direct-current component, as required by claim 3.

In view of the foregoing, Applicants respectfully submit that Green and Gorman, taken separately or in obvious combination, fail to teach or suggest every feature recited in independent claim 3. Thus, claim 3 is in condition for allowance.

Independent Claims 6-8, 11-13:

Independent claim 6 recites, *inter alia*, the following: “the mobile station side transmission part generates the special radio wave signal of same power as power used in the direct sequence system, and of a narrower band than a band used in the direct sequence system.” Independent claims 7, 8, and 11-13 have been amended to recite a similar feature as set forth above.

In page 4 of the Office Action, the Examiner acknowledges that Green fails to disclose the aforementioned claim feature. However, the Examiner imports the teachings of Kumar to remedy this deficiency. Particularly, the Examiner asserts the following:

“Motivation to be combined may be gleaned from the prior art contemplated. Therefore, one skilled in the art would have found it obvious from the combined teachings of Green and Kumar as a whole to produce the invention as claimed with reasonable expectation of achieving distinction from ordinary communication.”

(page 5 of the Office Action).

Applicants respectfully submit that the Examiner has omitted an essential element for establishing a *prima facie* case under § 103. Specifically, in *KSR Int’l v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007), the Supreme Court cited with approval the following statement from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006),

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

Applicants respectfully submit that the Examiner has failed to articulate any reason that would prompt one of ordinary skill to incorporate Kumar's alleged teachings into Green as proposed. In essence, the sole motivation provided by the Examiner for combining Green and Kumar is "to achieve distinction from ordinary communication" In essence, the Examiner asserts that persons of ordinary skill in the art would have modified Green simply for the sake of doing things differently, without having any desire or expectation of improving any aspect of Green's invention. This is **not** a proper rational underpinning to sustain the legal conclusion of obviousness, as required by *KSR*.

Furthermore, Kumar is not even in the same field of endeavor of Green, nor reasonably related to the problem Green is attempting to solve. Particularly, Kumar is merely related to improving the transmission and reception of in-band on-channel FM-band digital audio broadcast signals, and has nothing to do with the transmission of E-911 requests on a mobile communication network as disclosed by Green. This is further evidence that it would **not** have been obvious to modify Green in view of Kumar.

Since the Examiner has failed to provide the requisite rational underpinning for combining Green and Kumar, Applicants respectfully submit that the Examiner has omitted an essential element to establish a *prima facie* case under § 103 with respect to claim 6.

At least for the reasons set forth above, independent claim 6 is in condition for allowance. Further, since independent claims 7, 8, and 11-13 recite a similar feature as claim 6, these claims are also allowable for similar reasons.

Rejections Should Be Withdrawn:

At least for the reasons set forth above, Applicants respectfully submit that claims 2-8 and 11-13 are allowable over the above-cited references. The Examiner is respectfully requested to reconsider and withdraw the outstanding rejections.

Conclusion

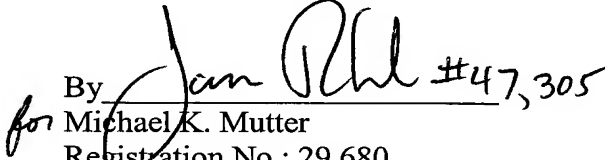
In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.

Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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